

Early Review Process Committee

Date of Meeting: July 4, 2012

Analyst Presenting Claim: Julie Lespérance

Claim Tombstone Information:

Name(s) of Claimant(s) (Federally recognized name(s))	<i>Mohawks of Kahnawà:ke</i>
Title of Claim submission	<i>Honoré-Mercier Bridge and Access</i>
Date Submission Received by DG	<i>May 2, 2012</i>
Registry File Number	<i>8260-671-1</i>
Substance of Claim	Alleges that the Crown took approximately 16 acres of reserve land during the Honoré-Mercier Bridge construction in 1932 and in 1936
Typology	<i>310/340</i>
Treaty area(s) concerned	<i>N/A</i>
Description of Claimed land(s)	Land where the access to the bridge is built
Province/Municipality	Québec, near Montréal
Pre-Confederation?	<i>No</i>
Under \$3 Million? <i>No</i>	Over \$150 Million? <i>No</i>

Recommendation:

Deadline:

Comments for Dashboard:

Minimum Standard for Kind of Information under the *Specific Claims Tribunal Act*, Sec 16(2)(a)

(Claim Document; Historical Report; Supporting Documents must include the following:)

A list of allegations based on one or more of the grounds related to the validity of the claim, as set out in the specific claims policy?	Yes
Legal arguments supporting each allegation?	Yes
A statement of the facts supporting the allegations?	Yes
A statement that compensation is being claimed?	Yes
A list of authorities with citations, including treaties, statutes, case law and law journal articles that support the allegations? (copies not required)	Yes
References to supporting documents, outlining the factual circumstances surrounding the allegations?	Yes
Complete copies of primary documents and relevant excerpts of secondary documents that support the allegations included in the claim document and Historical Report.	Yes

Minimum Standard for Form and Manner under the *Specific Claims Tribunal Act*, Sec. 16(2)(a)

(Presentation of the Submission: all elements must be present)

<p>The <i>supporting documents</i> must have the following standards:</p> <ul style="list-style-type: none"> Clearly labelled with the document source and number; Identified as referenced in the <i>Claim Document</i> and / <i>Historical Report</i> and / allegations; and, Separate document index, including the minimum standards: doc. #, date and archival ref. where applicable. 	<p>Yes</p> <p>Yes</p> <p>Yes</p>
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<p>The <i>supporting documents</i> must be:</p> <ul style="list-style-type: none"> • Legible and complete. (Transcripts are required for poor quality documents. See HQ CIDM# 1404301: Public History Guide to Producing Transcripts) • Clean copies. (Ensure that the <i>supporting documents</i> haven't been written on by the claimant.) • Intact. (Ensure the text hasn't been obscured by being cut off, stapled and / or bound in any shape or form.) 	<p>Yes</p> <p>Yes</p> <p>Yes</p>
Documents are submitted as hard copies and / or on CD-ROM, DVD-ROM, or any other standard mass storage device.	Yes, CD with the claim of 2005 and hard copy for new report and documents
The submission must be submitted by a First Nation as defined by the <i>Indian Act</i> Sec. 2(1); or a group of persons that was, but is no longer, an <i>Indian Act</i> Band that has retained the right to bring a specific claim under a land claim or self-government agreement.	Yes
Does the submission include evidence that it is being submitted to Canada with the express authority of the First Nation? (e.g. a Band Council Resolution, First Nation Legal Counsel)	Yes (letter and BCR)

Eligibility under the Specific Claims Policy (or *prima facie*)

Is the claim based on an event(s) that is at least 15 years old?	Yes
Is the claim based on a land claims agreement entered into after December 31, 1973, or any related agreement or Act of Parliament?	No
Is the claim based on an Act of Parliament or agreement that is mentioned in the schedule, or an Act of Parliament or agreement for the implementation of such an Act or agreement?	No
Is the claim based on the delivery or funding of programs related to policing, regulatory enforcement, corrections, education, health, child protection or social assistance, or of any similar programs or services?	No

Is the claim based on any agreement between the First Nation and the Crown that provides for another mechanism for the resolution of disputes arising from the agreement?	No
Is the claim based on aboriginal rights / title?	No
Is the claim based on treaty rights related to activities of an ongoing and variable nature, such as harvesting rights? (Note: Nothing prevents a claim that is based on a treaty right to lands or to assets to be used for activities, such as ammunition to be used for hunting or ploughs to be used for cultivation, from being filed.)	No
Is the claim submitted by the First Nation(s) suffering the alleged grievance?	Yes
Does the alleged lawful obligation relate to the federal government and deal with issues that are still outstanding?	Yes
Have the issues been compensated previously by Canada in litigation or by way of another agreement?	No
<p>List key allegations (verbatim):</p> <ol style="list-style-type: none"> 1. With regard to the initial expropriation, the Crown is liable for the following breaches: <ol style="list-style-type: none"> A. Expropriation of full interest of land breaches statutory framework: note that these breaches also constitute breaches of fiduciary duty. The Crown could not have expropriated a fee simple interest in the Mercier bridge lands given Sections 48(2) of the Indian Act, Section 13 of the Bridge Corporation Act and Section 96 of the Quebec Railway Act. B. Failure to provide adequate compensation as per Indian Act: this breach also constitutes of fiduciary duty, the Crown failed to provide any compensation for the Common land taken, and provide inadequate compensation for the common interest in the individually held land. C. Numerous breaches of fiduciary duty, including: failure to respect statutory framework applicable to expropriations, failure to consult and inform the Mohawks of Kahnawà:ke throughout the expropriation process on both the project and applicable statutory framework, failure to avoid conflict of interest, failure to expropriate minimum interest and impairment, failure to act with loyalty and in good faith, failure to expropriate with clear and plan intention, misrepresentation of Mohawk Council of Kahnawà:ke resolution, failure to properly correct errors in plans. 2. With regard to the additional taking of land, the Crown is liable for the following 	

breaches:

- A. Expropriation of "full interest" of land breaches wording of O-I-C (this breach also constitute breaches of fiduciary duty). As outlined above, the Crown expropriated a "Right-of-Way" interest in favour of the Department of Roads, and later interpreted this to mean that a full interest was expropriated.
- B. Permitting expropriation prior to exercising statutory authority to do so (this breach also constitute breaches of fiduciary duty). As outlined above, the Crown permitted the Quebec Department of Roads to proceed with expropriations, and displacing of Mohawks prior to actually exercising its statutory authority to do so. This bureaucratic authorization constitutes an illegal disposition of land, and placed the Mohawks in a poor negotiating position.
- C. Failure to provide adequate compensation (this breach also constitutes a breach of fiduciary duty). The Crown supported the Quebec Department of Roads, and pressured/lead individual interest holders into accepting lower settlements than what could have been negotiated. This diminished their compensation, and the compensation that was paid for the communal interest.
- D. Numerous breaches of fiduciary duty, including: failure to consult and inform the Mohawks of Kahnawà:ke throughout the expropriation process on both the project and applicable statutory framework; actively impeded consultation and negotiation; failure to avoid conflict of interest, failure to expropriate minimum interest and impairment; failure to act with loyalty and in good faith; failure to expropriate with clear and plain intention; failure to properly correct errors in plans.

Claim Context:

First Nation affected by the Claim or involved in the history of the Claim:

Mohawks of Kahnawà:ke

Other parties affected or involved in the history of the Claim:

Department of Transport (Province of Québec)

Other Claims and/or litigation involving the Claimant and other interested parties:

CPR Railway, 8260-726, FCL
 CXL, Railway, 8260-841, FCL
 Lines 1, 2, 3, 4, 8260-592, FCL
 Mercier-Bridge and its approaches, 8260-671, FCL
 Sault St. Louis, 8260-366, ACT
 St. Lawrence Sea Way, 8260-610, FCL

Other INAC, federal or provincial programs that may address aspects of the Claim:

N/A

Specific Claim Submission
Review of Reasonable Minimum Standards and Policy Eligibility

Recommendation for filing with the Minister:

Recommendation:

1. Meets criteria for Kind of Information; Form & Manner; Within Policy

Submission meets the *Reasonable minimum standard* as required under Section 16(3) of the *Specific Claims Tribunal Act* to be filed with the Minister and the claim falls within the Specific Claims Policy.

Committee Decision: Submission meets the Minimum standards as established by the Minister pursuant to the *Specific claims Tribunal Act* and set out in the Specific Claims Policy

Preparation of letter 2.2: Deadline (Remove reference to minor technical issues)

EARLY REVIEW PROCESS - SUMMARY

CLAIMANT: Mohawks of Kahnawà:ke

TITLE OF CLAIM: Honoré-Mercier Bridge and Access

DATE RECEIVED BY DG: May 2, 2012

Researched by: Joan Holmes and associates (2005) and
Mohawk Council of Kahnawà:ke (2012)

Legal argument by: Mohawk Council of Kahnawà:ke

Presented by: Julie Lespérance

BACKGROUND

March 5, 1889 – Order-in-Council (OIC) # 466 confirms the Indian reserve status of Sault St. Louis, (now known as Kahnawake Indian Reserve # 14).

June, 1928 – The federal Minister of Finance pledged that his government would guarantee one-third of the debentures needed for the construction of a new bridge between Lachine and Caughnawaga, provided that the Quebec government passed legislation providing for the remaining two-thirds. The provincial legislation, passed on March 28, 1928 under the title *An Act respecting the construction and maintenance of a bridge over the river St. Lawrence at Caughnawaga*, incorporated the Corporation of Lake St. Louis Bridge to build and operate the proposed bridge. This bridge is now known as Honoré-Mercier Bridge linking the south shore land to Montreal Island via provincial road 132.

December 7, 1932 – The Governor in Council approved the initial land transfer of 15.19 acres through OIC #2675 in order to start the construction of the Bridge.

March 9, 1936 – The OIC #534 is passed and formally transferred 2.11 acres of land to the Government of the Province of Quebec, pursuant to the provisions of Section 48 of the *Indian Act*.

Background of the claim in SCB process

April 14, 2005 – The Specific Claims Branch received a Specific Claim Submission from the Mohawks of Kahnawà:ke First Nation. This Specific Claim concerned the taking of Kahnawake IR 14 land for the Mercier Bridge and its approaches.

May 25, 2009 – The Mohawks of Kahnawà:ke withdrew their claim from Specific Claims process. After having received the refresh letter from SCB asking if they want to provide

additional material or new allegation to their claim pursuant to coming into force of the *Tribunal Act*, the First Nation decided that six months period was not long enough to refresh all their specific claims and withdrew them all in June 2009.

May 2, 2012 –The Mohawks of Kahnawà:ke resubmitted the same claim to the Specific Claims Branch with new documents.

SUBSTANCE OF THE CLAIM

This claim is based on the expropriation of Indian land for the construction of the Mercier Bridge and its approaches. The First Nation alleges that the Crown breached many of its obligations and the rights of the Mohawks of Kahnawà:ke.

The remedies sought are fair compensation for the loss of approximately 16 acres of waterfront land of special nature; and the loss of use of land and benefits from the land from the date of the expropriation to today.

STANDARD OF RESEARCH

The First Nation has submitted the reports and the documents that were part of their claim in May 2005 which the FN withdrew in June 2009. SCB had done research on this claim and an executive summary. Moreover, the submission received in May 2012 presents a legal report and new documents that are legislation documents and newspaper articles.

RESEARCH CONSIDERATIONS

Research Team should analyse the new material and assemble it with the package that already exists from June 2009.

An analysis of the allegations of this claim will have to be done in comparison with 2005 to ensure that they are all researched.

POLICY CONSIDERATIONS

N/A

s.23

RECOMMENDATION

It is recommended that the submission be filed as a claim with the Minister of Aboriginal Affairs and Northern Development.

Originator: Julie Lespérance/Monique Forget
Telephone No.: 953-4880/953-8346
Date: May 15, 2012
Reviewed: June 22, 2012
CHRONO: 8260-671-1
CIDM NCR: 4318060

Linda Rychel - EARLY REVIEW PROCESS: RECORD OF DECISION - APPROVED

From: Janet Townson
To: Andrew Webster; Don Boswell; Guylaine Gaudreau; Jacques Siegrist; Li...
Date: 24/07/2012 12:49 PM
Subject: EARLY REVIEW PROCESS: RECORD OF DECISION - APPROVED
CC: Aida Hidic; David Lachapelle; Derek Moore; Derek Tubman; Heather Rob...
Attachments: NCR-#4484297-v2-EARLY_REVIEW_PROCESS_RECORD_OF_DECISION_-
_APPROVED.PDF

Good Day Everyone...

Attached, please find the approved Record of Decision for the July 4, 2012 ERP Meeting.

Please note: This is sent to all those in attendance, the Sr. Claims Analysts, BCU contacts and DLSU contact. Please forward this to anyone who was not in attendance, but who may need access to the Record.

Thank you

PROTECTED A

Early Review Process: Record of Decision

ERP Date: *Wednesday July 4, 2012*

Letters Due: July 23, 2012

1.

s.20(1)(b)

2.

3.

4.

5.

NCR#3045835 - v29

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PROTECTED A

ERP Date: *Tuesday July 4, 2012*

Letters Due: July 23, 2012

6.

s.20(1)(b)

7.

8.

9.

10. **Mohawks of Kahnawà:ke: Mercier Bridge**

a. Rec'd by DG: May 2, 2012; Six Months: November 2, 2012

b. Officer: Julie Lespérance

c. File with Minister, Notice 2.2, Due July 23, 2012, Type: 310 (P), 340 (S), 630 (T)

11.

PROTECTED A

ERP Date: Tuesday July 4, 2012

Letters Due: July 23, 2012

12.

s.20(1)(b)

Additional Decisions: Miscellaneous

- **Adopt the use of claimant's claim name.** When possible, SCB will adopt the claim name provided by the claimant. Where a duplication of claim names for the same claimant occurs in the database, it is not feasible to adopt the claim name provided by the First Nation.
- **BCR's remain in effect until revoked.** A Band Council Resolution (BCR) is in effect until such time as the current Chief and council revoke the BCR. Therefore, for the purposes of meeting the Minimum Standard, the BCR must be from the claimant First Nation containing information regarding the remittance of the submission at hand for review under the SC Policy.
- **Meetings will be conducted without presentation of items.** Presentation of items will include a summary from the Analyst only if something has changed since sending the ERP documents via email. Otherwise, members and attendees are expected to come prepared to the meetings and input from the Stakeholders is initiated immediately.

Updates:

s.23

Expedited Opinions are another available tool to be considered at the ERP process.

Streamlining the ERP process is underway (may mirror the CAC process, somewhat) and re-vamping the ERP Briefing Document is on-going.

PROTECTED A

Record of Decision:

Janet Townson 2012/07/23
Janet Townson, DATE
Research Analyst, Recorder

☒ I concur with the Record of Decision for July 4, 2012.

☐ I do not concur with the Record of Decision for July 4, 2012.

G. Gaudreau 2012/07/24
Guylaine Gaudreau, DATE
A/ Research Manager, Chair

PROTECTED A

Early Review Process Record of Decision

ERP Date: Tuesday July 4, 2012

Participants:

PRA Shared between (QC/ AT and ON Teams)

Guyline Gaudreau (A/Research Mgr)
~~Monique Forget~~ (QC/ AT Sr)
Linda Rychel (DOJ)
Janet Townson (Info. Mgmt)
David Lachapelle (Admin)

Andrew Webster (Policy)
Don Boswell (ON Sr)
~~Jacques Siegrist~~ (BC/YK Sr - phone)
~~Julie Lesperance~~ (A/ QC/AT Sr)

Sue Hotner
~~Kerry Boyce~~
~~Geneviève Desrochers~~
~~Allister Morrison~~
Michael Santerre
Derek Tubman
Mathieu Gill
Stephen Savauge (phone)
Heather Robinson (phone)
James Murray